IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/4/2006

C O R A M

THE HONOURABLE Mr.JUSTICE M.JEYAPAUL

Criminal Original Petition No.2205 of 2006

BulBul Roy Mishra ... Petitioner

Vs

City Public Prosecutor
Office of the City Public Prosecutor
City Civil Court Building
High Court Campus
Chennai 600 104. ... Respondent.

Petition filed under Section 482 of Cr.P.C., praying for the relief as stated therein.

For petitioner ... M/s.Bishwajith Bhattachary
S.D.N.Vimalanathan

For respondent ... Mr.S.Jeyakumar,
Public Prosecutor.

O R D E R

The petitioner who is the first accused in C.C.No.16 of 2005, launched for offences under Sections 500 and 501 of I.P.C., moves this petition, seeking quashment of the said proceedings pending before the learned III Additional Sessions Judge, Chennai.

2. An article under the caption "Another victim of Despotic Design" was published in "The Pioneer" English daily issue dated 18/1/2005.

3. In the said issue, the implication of the seer in the murder case of Sankaraman and the junior pontiff were dealt with. Some motivation also has been attributed to Miss.Jayalalitha, The Honourable Chief Minister of Tamil Nadu. There has been some reference to the attacks on Ms.Chandralekha, I.A.S, M/s.K.M.Vijayan and Shanmuganathan Advocates. Finally, a moot point has been raised whether an autocratic Chief Minister who abuses the legal process for her own selfish end should

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be allowed to rule the State. Miss.Jayalalitha, The Honourable Chief Minister of Tamil Nadu having found that the aforesaid defamatory article damaged her reputation in the discharge of her official duties as The Chief Minister of Tamil Nadu, preferred a private complaint under Section 199 (2) of Cr.P.C., through the City Public Prosecutor, High Court Campus, Chennai for offences under Sections 500 and 501 of I.P.C.

4. The petitioner is the author of "The Pioneer" English daily.

5. In the quashment petition, she has contended that a criminal case of defamation cannot be laid in the City of Chennai as the English daily "The Pioneer" was published only in New Delhi. As there was no circulation in the City of Chennai, the complainant cannot prefer a complaint in the City of Chennai. It is contended that Miss.Jayalalitha, The Honourable Chief Minister of Tamil Nadu should have preferred the complaint herself as the reputation of the position of Chief Minister-ship has not been lowered in the estimation of the public. As the impugned article squarely falls under the Exception to Section 499 of I.P.C., even on merit, the case does not stand the scrutiny of the Court of law.

6. In the counter filed by the City Public Prosecutor, the respondent herein has contended that in as much as the English daily "The Pioneer" is under circulation in the City of Chennai, the Courts in the City of Chennai has territorial jurisdiction to deal with the criminal case of defamation. The complaint has been rightly filed by the City Public Prosecutor drawing powers under Section 199 (2) of Cr.P.C. The disputable point as to whether the impugned article falls squarely under Exception 4 of Section 499 of I.P.C., will have to be decided only by the trial Court.

7. The Court heard the submissions made on either side, in the line of the respective pleas of the parties.

8. There is no dispute to the fact that the petitioner is the author of the English daily "The Pioneer" published in New Delhi under the caption "Another Victim of Despotic Design". It is very pertinent to refer to herein below certain portions alleged to be defamatory in nature.

> "That Miss.Jayalalithaa was neither pained nor repentant is evident from the arrest of the junior Pontiff within hours of the release order for the Senior.
> .....
>
> "But Indian tradition teaches us to respect and not suspect a seer without evidence. Besides, robbing an honourable man of his honour amounts to killing him.
>
> .....

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"In the above context, the treatment of the pontiff as ordinary criminal without an iota of evidence obviously turns the needle of suspicion to Ms.Jayalalithaa herself. All the more so when she reportedly communicated to the Governor on January 15 that her Government was exploring ways to take over the Mutt. The motivating factor could be the enormous wealth of the Mutt, vote politics or personal affront to Ms.Jayalalithaa on the hospital acquisition issue.

.....

"Herself suspected of engineering attacks on Ms.Chandralekha (IAS), Messrs.K.M.Vijayan and Shanmuganathan, both advocates, and beating up her personal auditor, it is farcical that she would venture to arrest the seer onthe flimsiest charge of assault on some Mutt members without substance.

.....

"Should the Country allow an autocratic Chief Minister to abuse the legal process for her own selfish end, reducing the rule of law into a "teasing illusion or promise of unreality" as Justice Krishna Iyer had put it?"

9. The above text of the article would prima facie disclose in the considered opinion of this Court the commission of an offence of defamation.

10. Exception 4 of Section 499 of I.P.C. reads

"it is not defamation to publish a substantially true report of the proceedings of a Court of justice or of the result of any such proceedings".

11. The learned counsel for the petitioner would submit that the petitioner has just expressed her critical opinion based on the judgment pronounced by the Honourable Supreme Court in Sankaraman murder case.

12. Of course, there is some reference in the article about the verdict of the Honourable Supreme Court in the case of murder of Sankaraman. But the aforesaid portions culled out and referred by this Court would reveal that such a reference by the author does not have close proximity with the judgment passed by the Honourable Supreme Court. Further, the alleged defamatory portion published in "The Pioneer" cannot be construed as a substantial true report of the proceedings of a Court of Justice.

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13. The Honourable Supreme Court in SEWAKRAM SOBHANI Vs. R.K.KARANJIA, CHIEF EDITOR, WEEKLY BLITZ AND OTHERS (1981 SUPREME COURT CASES (Cri) 698, observed as follows:

> "In order to attract the Ninth Exception to Section 499 of the Penal Code, the imputations must be shown to have been made (i) in good faith, and (ii) for the protection of the interest of the person making it or of any other person or for the public good. In the definition of 'good faith' in Section 52 IPC, the insistence is upon the exercise of due care and attention. Recklessness and negligence are ruled out by the very nature of the definition. The standard of care and attention must depend on the circumstances of the individual case, the nature of the imputation, the need and the opportunity for verification, the situation and context in which the imputation was made, the position of the person making the imputation, and a variety of other factors. Good faith, therefore, is a matter for evidence. It is a question of fact to be decided on the particular facts and circumstances of each case. So too is the question whether an imputation was made for the public good."

14. The Orissa High Court also has held that the question as to whether the printer and publisher are entitled to the benefit of the exceptions provided under Section 499 of I.P.C. Can only be gone into during the course of trial.

15. In the light of the above authorities, it is held that the petitioner can very well plead before the trial Court that he comes squarely under Exception 4 of Section 499 of I.P.C. during the course of trial of the case. This Court cannot decide whether the imputation falls under any of the exceptions.

16. It is submitted by the learned counsel for the petitioner that the publication was only in New Delhi and not in the City of Chennai and therefore, the Court at Chennai doesn't have territorial jurisdiction to deal with the alleged defamatory article published in New Delhi.

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17. The learned Public Prosecutor appearing for the respondent, produced a bill to show that Ganesh News Mart at Triplicane, Chennai, distributes "The Pioneer" English daily to the Director Information and Public Relations Department, Fort St. George, Chennai. Of course, the said bill was dated 7/2/2005. But on the basis of the aforesaid document, the Court can come to the conclusion that there is distribution and circulation in the City of Chennai, the English daily "The Pioneer".

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18. In the authority reported in C.S.SATHYA Vs. STATE OF KARNATAKA AND ANOTHER (1993 (2) Crimes – 143), the Karnataka High Court has observed:

> "The law that has been laid down by the various High Courts in the rulings referred to above is clear on this point that the consequence that ensue must form part of the ingredients of the offence and if it is not a part of the ingredients of the offence then the consequence even if it takes place in the jurisdiction of another Court, will not give jurisdiction to try the offence. In the instant case, from the complaint itself it can't be seen that the alleged defamatory matter was published at Bangalore itself. When the matter is published in a paper or a weekly, it is intended to be read. So the consequence of harming the reputation of the complainant has ensued at Bangalore itself. The complainant reading or having come to know of this alleged defamatory matter at Udupi is not an ingredient of the offence, because the offence itself is completed at Bangalore. Therefore, in my opinion, the Court at Bangalore alone has got jurisdiction to try the offence."

19. The verdict is that the defamatory article published at Bangalore, but was read at Udupi by the complainant doesn't clothe any territorial jurisdiction on the Court at Udupi, as the offence of defamation has completed at Bangalore itself.

20. The United States Court of Appeals for the fourth circuit in STANLEY K.YOUNG, Vs. NEW HAVEN ADVOCATE; GAIL THOMPSON; CAMILLE JACKSON; HARTFORD COURANT; BRIAN TOOLAN; AMY PAGNOZZI and MICHAEL LAWLOR; CAROLYN NAH; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; CONNECTICUT POST; RICK SAWYERS; KEN DIXON, it has been observed as follows:

> "The facts in this case establish that the newspapers' websites, as well as the articles in question, were aimed at a Connecticut audience. The newspapers did not post materials on the Internet with the manifest intent of targeting Virginia readers. Accordingly, the newspapers could not have "reasonably anticipate(d) being haled into Court (in Virginia) to answer for the truth of the statements made in their article(s). "Calder, 465 U.S. At 790 (quotation omitted). In sum, the newspapers do not have sufficient Internet contacts with Virginia to permit the district court to exercise specific jurisdiction over them. Because the newspapers did not

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intentionally direct Internet activity to Virginia, and jurisdiction fails on that ground, we have no need to explore the last part of the ALS Scan inquiry, that is, whether the challenged conduct created a cause of action in Virginia."

21. In the aforesaid case originated in United States of America, the publisher had not intended to cover the clientele in Virginia. The article was published aiming at a CONNECTICUT AUDIENCE. Under such circumstances, the appellate Court in the United States of America has held that the Court at Virginia, where there was no circulation of the news paper, where the impugned article found a place does not have a territorial jurisdiction to deal with a case of defamation.

22. It is pertinent to refer to Section 179 of Cr.P.C., which reads as follows:-

"Section 179. Offence triable where act is done or consequence ensues.-- When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

Wherever the consequence of the offended act has ensued a criminal action can be laid over there as per the aforesaid provision of law.

23. The Bombay High Court in Dr.SUBRAMANIAM SWAMY Vs. PRABHAKAR S.PAI AND ANOTHER (1984 CRI.L.J. - 1329 has held the Court at Chandigarh, where the defamatory statements was made by the accused in a Press Conference and the Courts at Bombay, where the defamatory statement was published, circulated and read can have co-ordinate territorial jurisdiction to deal with a case under Section 500 of I.PC.

24. The Karnataka High Court in S.BANGARAPPA Vs. GANESH NARAYAN HEGDE AND ANOTHER (1984 CRI.L.J 1618) amplifying the provisions of Section 179 of Cr.P.C., observed as follows:

"Section 179, Cr.P.C., applies to those offences which, by their very definition, consist of an act and its consequence. In short, the act and its consequence must together constitute an offence. The offence of defamation consists not only of the statement said to have been made but also its publication. The publication is a consequence of the alleged statement said to be made by the accused. Therefore, the Court which would have jurisdiction must be the Court where the act has been done or where the consequence has ensued. The consequence contemplated

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by S.179 is not a remote consequence of the act done. 'Consequence' is confined to that which is an ingredient of the offence for which the accused person is being tried."

25. Both the Courts where the act has been done and where the consequence has ensued have concurrent territorial jurisdiction, it has been declared in the aforesaid judgment.

26. Taking a departure from its own judgment in the authority reported in C.S.SATHYA Vs. STATE OF KARNATAKA AND ANOTHER (1993 (2) Crimes 143), the High Court of Karnataka in P.LANKESH AND ANOTHER Vs.H.SHIVAPPA AND ANOTHER (1994 CRI.L.J. - 3510) has held as follows:-

"Where a newspaper containing a defamatory article is printed and published at one place and is circulated or sold at other places by or on behalf of the accused responsible for the printing and publishing the newspaper, then there would be publication of the defamatory article in all such other places and the jurisdictional Magistrate can entertain the complaint for defamation.

It cannot be said that the act of publication comes to an end as soon as one issue of the newspaper is released at one place. If that newspaper is despatched by the printer and publisher to other places for being sold or circulated the defamatory article gets published at each such place. Mere fact that the headquarters of a news paper is based at a particular place or that it is printed and published at one place, does not necessarily mean that there cannot be publication of defamatory article contained in the paper at another place. If the defamatory imputation is made available to public at several places then the offence is committed at each such place. Though the first offence may be committed at the place where it is printed and first published, it gets repeated wherever the newspaper is circulated at other places."

27. The publication of the English daily "The Pioneer" has been done at New Delhi, but there is prima facie material to show that, it has been circulated in the city of Chennai. The article is aimed at the Honourable Chief Minister of Tamil Nadu. The article is probably made for the consumption of the people of Tamil Nadu, where it has been circulated. The act of committing the offence of publication of a defamatory article has its repercussion of action where the distribution has been made. The cause of action which originated at the place where the defamatory article was published has its consequence in the State of

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Tamil Nadu, where it was distributed for the consumption of the people of Tamil Nadu. Therefore, the defacto complainant can not contend validly that the place where the article was distributed does not have territorial jurisdiction to deal with defamatory case.

28. Section 199 (2) of Cr.P.C., contemplates filing of private complaint on behalf of certain High Dignitaries including a Minister of a State for defamation in respect of the conduct of such a high dignitary in the discharge of his public functions. The position of Chief Ministership has been specifically referred to in the impugned article. The caption of the article impliedly refers to the style of functioning of the high dignitary. The attack has not been launched against Miss.Jayalalithaa in her individual capacity. The Public Prosecutor has rightly laid the complaint for defamation on behalf of the Honourable Chief Minister of Tamil Nadu.

29. The Court finds that there is no substance in the various contentions of the petitioner referred to above and therefore, the petition fails and the same is dismissed. Consequently, the connected Criminal Miscellaneous Petition Nos.497 and 498 of 2006 are also dismissed.

mvs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

To

1. The City Public Prosecutor
Office of the City Public Prosecutor
City Civil Court Building, High Court Campus
Chennai 600 104.

2. The III Additional Sessions Judge, Chennai.

3. -do-through The Principal Sessions Judge, Chennai.

+ 1 CC To The Public Prosecutor,High Court,Madras, SR NO.16459.
+ 1 CC To Mr.S.D.N.Vimalanathan, Advocate, SR NO.17328.

Order in
Crl.O.P.No.2205 of 2006

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